

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7238 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NANUBHAI KHALPABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners
Mr.S.N.Shelat, Addl.Advocate General for Respondent
No. 1 & 2
MR YF MEHTA for Respondent No. 3

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

Date of decision: 22/10/96

ORAL JUDGEMENT (Per Soni J.)

Petitioners, by this petition under Article 226 of the Constitution of India, have prayed for writ of mandamus or any other appropriate writ, order or

direction to quash and set aside the notifications at Annexures A & I, being respective notifications under sections 4 and 6 of the Land Acquisition Act, 1984 ('Act' for short). By notification under section 4, respondent no.1 proposed to acquire the land mentioned therein for the purpose of dumping ground for solid waste arising from Vapi Industrial Estate of Gujarat Industrial Development Corporation. Subsequent to notification under sec.4, sec.6 notification also came to be issued wherein it is mentioned that on expiry of 15 days of notification under sec.9, sec.17(1) of the Act shall be invoked.

These notifications are challenged on the grounds mainly that (i) they are issued in mala fide exercise of power inasmuch as this land is proposed to acquire after giving up the land acquired earlier or because of the direction of this court to acquire land other than one involved in Spl.Civil Application nos.4919 and 5095 of 1995; (ii) the notifications suffer from the vice of non-application of mind to the relevant facts; (iii) the authority concerned has not considered the public interest inasmuch as the land of the petitioners is preferred to the land of others and of respondent no.3 itself; (iv) the purpose of acquisition directly affects adversely petitioners' right to live in atmosphere congenial to human habitation and Articles 14, 19 and 21 of the Constitution of India; and (v) authority concerned has not taken into consideration the ecology before acquiring the lands inasmuch as the purpose itself encourages industries to pollute environment.

It will be relevant to refer to some facts which lead to the acquisition proceedings for these lands. The High Court of Gujarat has invoked its suo motu jurisdiction for control of pollution at Vapi Industrial Estate vide Spl.C.A. Nos.14019 and 6926 of 1994. In the said petitions, High Court had directed the State Government to make available site for disposal of hazardous solid waste to the industries on or before June 30, 1995. Thereupon, State Government acquired the land at village Morai. Said acquisition came to be challenged in Spl.C.A.Nos.4919 and 5095 of 1995. In the course of hearing of the said petitions, the High Court directed to consider other lands which could be more suitable for disposal of hazardous solid waste. Thereafter, the District Level Committee under Chairmanship of Collector, Valsad, evaluated several lands once again and recommended that if other sites are to be considered, the site of Vapi-Degam road near Rata Khadi should be examined for consideration. The High Court had then

directed to consider the report of the Collector and further directed the Gujarat Pollution Control Board to consider the entire question as regards the land to be made available. Then based upon the recommendation of the Committee, the State Government issued notification dated 8.11.95 under Rule 8 of Hazardous Wastes (Management and Handling) Rules, 1989 made under sections 6, 8 and 25 of the Environment (Protection) Act, 1986. The High Court then directed GIDC to proceed for the acquisition of the land and the above notification came to be issued. This is how the land is sought to be acquired by the Government for the purpose of dumping ground for solid waste.

The contention that the action of the Government suffers from mala fide exercise of power is required to be stated to reject it. It will be relevant to state that acquisition has started after the direction is given by this court in earlier two petitions referred hereinabove and the proceedings for acquisition were started after obtaining necessary reports, as it appears from the affidavit filed on behalf of the Government. Specific case of mala fide against any one is not made out, much less of user of power by any one.

The notifications are challenged on the ground of non-application of mind by the Government. Learned Additional Advocate General Mr. Shelat has contended before us that the land to be acquired is required to be used for the purpose of dumping solid waste and necessary treatment would be given to that land before and after the waste is dumped. The main grievance of the petitioners is that the Government has selected the land for dumping waste near the village and there are as many as 30,000 persons residing nearabout, who will be affected adversely. The land is surrounded by agricultural land and as soon as the site is taken possession of and the dumping starts, it will cause and create pollution and this will adversely affect the villagers, their agricultural lands, their water, etc. We may make it clear that figure of persons to be affected by 30,000 as stated by learned counsel for the petitioners is not supported by any material on record. We have with us only 11 petitioners, who are residents of that village. However, it is also clear from the record that in Vapi Industrial Estate, there are more than 2000 industries and approximately one lakh workmen. This is a matter of record while the figure stated by learned counsel for the petitioners is not based on any material on record. Apart from this, it is clear from the record that necessary action and treatment will be required to

be taken by the authority concerned to see that the said dumping may not cause a further pollution. From the affidavit-in-reply of Dy. Collector on Special duty, it is clear that after due consideration on the technical aspect and availability and requirements and after ensuring minimum hardship to the concerned people at large, the selection of the site is made. This apart, none of the allegations made by the petitioners, namely, that the water will be polluted; that the people at large will be deprived of the minimum essential of life; that the pollution will be increased; that the canal will be affected if the solid waste dumping ground is made in that area, is not based on the opinion of any expert. They are based on certificate of ordinary citizens who do not know ABC of the subject. Thus, we do not find any substance in the contention of the learned counsel for the petitioners that the land if used for dumping may cause pollution and would adversely affect the villagers, their cultivation and potable water. On the contrary, the purpose of acquiring land is to collect, store, control, treatment and disposal of solid waste, which otherwise will cause pollution. The land is acquired in order to reduce or remove the pollution in the area. If the same is not done, it is likely to affect number of workmen, as stated hereinabove. If the dumping of solid waste is regularised as suggested by the Department, concerned department has to take necessary action to see that dumping may not cause any further pollution. After dumping at the place, there will be a supervision by GPCB to see that there is no further pollution. Thus, there is no substance in the contention raised by learned counsel for the petitioners that dumping may cause further pollution.

Learned counsel for the petitioners further contended that acquisition is with an ulterior object to favour industrialists at the cost of poor farmers and villagers. Learned counsel appears to have failed to appreciate that the acquisition is not for any industrialist, but it is for the dumping of solid waste coming out of whole of Vapi Industrial Estate and not for dumping waste of any individual industrialist. Dumping ground is to be provided with a view to control pollution. It will be relevant to state that because of high pollution due to solid waste and absence of treatment plant for the same or any specific place to dump the same, pollution crossed the limit and there was a public interest litigation. In the course of hearing of said petitions, it was proposed and suggested by the court to have some treatment plant or dumping place to regularise the dumping of such solid waste with a view to

minimise or control pollution. As a consequence thereof, the authority proposed acquisition of the land and it was proposed to acquire the land which came to be challenged in the petitions referred above. However, when it was brought to the notice of the court about the non-suitability of the land, court suggested to find out some alternative and more suitable land and the impugned notifications came to be issued. It was made clear that solid waste which will be dumped will always be supervised and controlled as per the norms of hazardous waste by GPCB prescribed under the Act and Rules under Environment Protection Act, 1986 and Hazardous Waste (Management and Handling) Rules made under that Act. According to G.P.C.B., Operators are also required to take necessary authorisation for the same from GPCB with conditions for development to be supervised by GPCB under the said Hazardous Waste (Management & Handling) Rules, 1989. There will be a scientific management and ultimately the said waste will be dumped and all the precautions may not cause any pollution or it may be kept within the prescribed limit or standard of pollution. If the pollution is within the prescribed limit, then it cannot be said to be a pollution much less hazardous pollution.

One of the grounds raised by learned counsel for the petitioners is about suitability of the land. As held by the Supreme Court in the case of State of Punjab vs. Gurdial Singh (AIR 1980 SC 319), in absence of mala fide suitability is not the question to be considered by this court. We have discussed earlier that there is no case of mala fide made out in this petition. This apart, the selection of site is made after technical report and Expert opinion is received. Therefore, the question of suitability does not arise.

Learned counsel for the petitioners has relied and referred to the following judgments:-

1. Gadigeppa Mahadevappa Chikkumbi vs. State of Karnataka and Ors (AIR 1990 Karnataka 2);
2. Consumer Education & Research Centre vs. Union of India (AIR 1995 SC 922);
3. Olga Tellis and others vs. Bombay Municipal Corporation (AIR 1986 SC 180); and
4. M.C.Mehta vs. Union of India (AIR 1988 SC 1037);

In view of our above discussion, we do not find it necessary to discuss all these judgments in detail.

However, we may say that acquisition has taken place in view of the direction of this court in Spl.C.A.Nos.4919 of 1995 and it appears from the record placed before this court that the Government has commenced proceedings to acquire the land after taking into consideration the necessary reports of GPCB and the Statutory Expert Committee.

In view of the above, this petition is liable to dismissed and is hereby dismissed. Notice discharged. Ad-interim relief vacated. No costs.

At this stage, learned counsel for the petitioners requests this court to continue ad-interim relief further for a period of three months. Learned Additional Advocate General seriously objects the extention of ad-interim relief. We are of the opinion that in the facts and circumstances of this case and considering the seriousness of the matter and the purpose of acquisition and as the delay causes further damage to human life, it will not be in the fitness of the matter to continue the ad-interim relief any further. Hence, request to continue the ad-interim relief is rejected.
